



production be made as soon as practical by the State. Additionally, the statute contains built-in protective order provisions. *See Tex. Code Crim. P. 39.14(e); Powell v. Hocker, 516 SW3d 488, 497 (Tex. Crim. App. 2017)*. As an initial matter, the untimely production and contemporaneous claim of privilege would normally result in waiver of the claim of privilege. Thus, the Defendant requests that the claim of law enforcement privilege be overruled or withdrawn. Moreover, there is no legitimate “unfettered disclosure” concern.

The primary concern of this proceeding is to ensure the protection of the Constitutional rights of the participants. The Attorney General’s argument that disclosure could harm elected officials is ironic after having indicted an elected official and two others who were running for the office, tweeting about the indictment, and failing to timely produce the exculpatory information. The inescapable reality is that election irregularities such as those alleged here are normally handled in a civil context by the Texas Ethics Commission. The reality is that information such as that sought here is generally disclosed without dispute. Acquiesce to a request for special treatment is unwarranted.

There are narrow and limited circumstances under which a Court should enter an order restricting speech. *See e.g., In Re Clendennen, 2018 Tex App. LEXIS 2074; In Re Hearst News Paper Partnership, 240 S.W.3d 190 (Tex. Ct. App. 2007)*. Additionally, there can be First Amendment implications associated with such an order.

### **III. THE 302 AT ISSUE**

The disclosed redacted 302’s at issue contained exculpatory material and identified much of the material raised as a “concern” in the motion for protective order. The unredacted portion of the 302s is expected to contain additional exculpatory material. The Court must permit discovery of

exculpatory information. *See In Re Hartman 429 SW3d 680, 682 (Tex. App.-Beaumont 2014 original proceeding)*(“*Decisions regarding information that is exculpatory, mitigating or privileged are not discretionary*”) The Court should order the disclosure of the redacted material pursuant to Tex.R. Civ P. 39.14 (c).

#### **IV. PREVIOUSLY KNOWN FACTS**

The referenced 302 is not the sole source of the information contained therein. It is not a spy report. There are no security clearances associated with the document. It is an interview of a central witness in the case. Counsel has learned of some information likely in the referenced 302 from other sources. Thus, if the proposed protective order were granted counsel could in effect be prevented from disclosing information that he knew independent of the 302 at issue here.

#### **V. ONE COPY RULE**

Counsel for Ms. Stephens office in Dallas, Houston and Beaumont. The proposal that one copy of the document exist is not practical and adversely impacts her 6<sup>th</sup> Amendment right to effective assistance of counsel.

**WHEREFORE**, Ms. Stephens prays that this Court grant her Motion to Compel and enter an order that the State timely produce the material set forth in Tex. Code Crim. P. 39.14(a),(b) (h) and further find that failure of the State to comply with the provision of Tex. Code Crim P. 39.14(a),(h) will effectively deny Ms. Stephens due process. Further, that the Court deny the motion for protective order finding that the existing provisions of the Tex. Code Crim P. 39.14 provide access and protection appropriate for this case.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on January 9, 2019 a true and correct copy of Response on States Motion for Protective Order was served on the Texas Attorney General by electronic service through the electronic filing manager.

/S/ Russell Wilson II  
Russell Wilson II